

With respect to the rejection of Claims 1–19, it is submitted that these claims do not define the “same invention” as in claims in patent 6,679,021. This is believed to be clear by merely comparing the main independent claims in the present application and in the patent.

Thus, Claim 1 of the present application does not include the feature recited in the last three lines of Claim 1 of the patent, namely that the aerated concrete blocks are “contiguously placed in direct contact with each other and secured together within the modular wall segment solely by said walling sheets”. In view of the absence of this feature in Claim 1 of the present application, it is believed clear that Claim 1 of the present application is not drawn to “identical subject matter” as Claim 1 of the patent.

It is submitted, therefore, that the “double patenting” situation, if present at all in the present case, is not of the “statutory type” referred to in the Official Action, but rather is of the “court created” type, which can be overcome by a Terminal Disclaimer.

Accordingly, we enclose a Terminal Disclaimer which, in our opinion, overcomes the “double patenting” rejection of Claims 1–19.

It is to be noted that a claim corresponding to Claim 1 in the present application was submitted in the parent application which matured at U.S. Patent 6,679,021. Thus, Claim 1 which ultimately issued in U.S. Patent 6,679,021, was drawn to the combination of the features in Claims 1 and 2 of the application that matured into Patent 6,679,021. The Examiner in that application considered that the combination of features raised in Claims 1 and 2 was allowable. In order to facilitate the issuance of the patent, applicant amended Claim 1 in the parent application to include the subject matter of Claim 2, and thereby to conform the application to what the Examiner then considered to be allowable.

However, the applicant then, and also now, considers that Claim 1 of the parent application, corresponding to Claim 1 of the present application, is allowable over the references cited by the Examiner in the parent application, and therefore filed this continuation application in order to pursue this issue by way of this continuation application. Applicant requests that the references listed in patent application 6,679,021 be made of record in the instant application pursuant to MPEP Section 609, Section I, 2.

Claim 1 in the parent application, corresponding to Claim 1 of the present application, was rejected under 35 U.S.C. 103(a) as being unpatentable over Riefler U.S. Patent 4,098,040, in view of Osborne U.S. Patent 4,651,485, and further in view of Snitovski U.S. Patent 4,802,318. It is submitted, however, that the combination of features as now defined in Claim 1 of the present application is not disclosed in, or rendered obvious from, any of the foregoing references, whether taken singly or in combination.

Claim 1 thus defines a modular wall segment for constructing a wall as comprising first and second walling sheets of a selected two-dimensional shape and size, and a plurality of aerated concrete blocks contiguously located in a plurality of rows and columns by and between, and bonded on their opposite faces to, the first and second walling sheets.

Riefler U.S. Patent 4,098,040, relied upon as the primary reference applied against Claim 1 of the parent application, also discloses a concrete block panel, but this is about where its resemblance to the present invention ends. Thus, the concrete block panel illustrated in that reference, as shown for example in Fig. 10 and as defined for example in Claim 1 of that patent, includes concrete blocks having spaced load-carrying

walls with vertically aligned load-carrying pillars, vertical core openings, tensioned loops, and struts for transmitting the load from the tensioned loops through the pillars to the walls. The concrete elements of that block appear to be of conventional concrete, and not of aerated concrete, an essential feature of the present invention as defined in Claim 1 of the present application.

There is no suggestion that aerated concrete could be used for any of the concrete walls in the Riefler block construction. Moreover, even if the concrete used in the Riefler block construction were to be of aerated concrete, this would still not produce the combination of structural features defined in Claim 1 of the present application.

The Examiner refers to the secondary reference, Osborne, for a showing that it is known to use either an exterior sheathing or finished veneer on the exterior side of a concrete block, wherein the sheathing is attached to the wall by conventional means. The Examiner refers to Snitovski for a showing that it is known to use aerated concrete blocks to form a wall column. It is submitted, however, that modifying Riefler, in the manner suggested by the Examiner, would not involve obvious modifications of the Riefler structure in the light of the secondary references, but rather would involve a complete reconstruction of the Riefler construction in the light of Applicant's disclosure. Such a rejection, of course, is not supported by 35 U.S.C. 103(a).

It is submitted, therefore, that Claim 1 of the present application is allowable over the foregoing references.

Claims 2–19 all depend from Claim 1, and are therefore submitted to be allowable with that claim, apart from the further features set forth in the respective dependant claims.

Claim 20, drawn as an independent method claim, was rejected under 35 U.S.C. 102(b) as being anticipated by Kirk U.S. Patent 4,021,983. Favorable reconsideration of this rejection is also respectfully requested.

Kirk relates to a building wall construction made of "paperboard honeycomb layers". This is clear from the description, the drawings, and also from the claims (e.g., Claim 1). Claim 20 clearly distinguishes over such a structure, particularly under 35 U.S.C. 102(b), by the recitations that the building blocks are "aerated concrete blocks", which is a different kind of construction from the "paperboard honeycomb layers" of Kirk. Since a method is defined, not only by the manipulative steps performed, but also by objects being manipulated, it is clear that Claim 20 of the present application clearly distinguishes over Kirk under 35 U.S.C. 103(b).

In view of the foregoing, it is believed that this application is now in condition for allowances, and an early Notice of Allowance is respectfully requested.

Respectfully,



Sol Sheinbein
Registration No. 25,457

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